

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

MIDAMERICAN ENERGY COMPANY,
BLACK HILLS/IOWA GAS UTILITY
COMPANY, LLC d/b/a BLACK HILLS
ENERGY, IOWA ASSOCIATION OF
ELECTRIC COOPERATIVES,
INTERSTATE POWER AND LIGHT
COMPANY, and IOWA ASSOCIATION
OF MUNICIPAL UTILITIES,

Petitioners,

v.

IOWA UTILITIES BOARD,

Respondent.

Case No. CVCV064145

**RULING ON PETITION FOR
JUDICIAL REVIEW**

Before the Court is a Petition for Judicial Review filed by Petitioners MidAmerican Energy Company (MidAmerican), Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy (Black Hills), Iowa Association of Electric Cooperatives (IAEC), Interstate Power and Light Company (IPL), and Iowa Association of Municipal Utilities (IAMU) (collectively Petitioners) on August 8, 2022. Respondent Iowa Utilities Board (Respondent or Board) filed its Answer on August 23, 2022. The Court held a hearing on January 13, 2022. MidAmerican was represented by Mark Lowe, IAEC was represented by Dennis Puckett, Black Hills was represented by Adam Buhrman, IPL was represented by Matthew Sowden, and IAMU was represented by Tim Whipple. Respondent was represented by Jon Tack and Diana Machir. After hearing the arguments of counsel and reviewing the court file, including briefs by all parties and the administrative record, for the reasons stated herein, the Court enters the following ruling.

I. FACTUAL AND PROCEDURAL BACKGROUND

Iowa Code section 476.10A provides for a statutory assessment to fund the Iowa Energy Center (IEC) and the Center for Global and Regional Environmental Research (CGRER). Pursuant to the statute, the Board is to assess each electric and gas utility in the state of Iowa based upon their gross revenues. Specifically, “[t]he board shall direct all gas and electric utilities to remit to the treasurer of state one-tenth of one percent of the total gross operating revenues during the last calendar year derived from their intrastate public utility operations. Iowa Code § 476.10A(1)(a). By its own sunset provision enacted in 2017, the code section was repealed July 1, 2022. This dispute centers on the Board’s assessment in the aggregate amount of \$6,098,088 in May 2022 based upon electric and gas utility gross revenues for the 2021 calendar year. Petitioners believe that the assessment is illegal in light of the July 1, 2022 sunset provision, and that the utilities should not be required to pay for it.

On June 2, 2022, Petitioners filed with the Board an objection to the Board’s assessment under Iowa Code section 476.10A. The Board issued an Order denying the objection on July 29, 2022, constituting final agency action. Petitioners filed their petition for judicial review of the Board’s order on August 12, 2022. On August 8, 2022, Petitioners filed with the Board a Motion to Stay the Board’s July 29, 2022 order pending judicial review pursuant to IUB rule 199 – 7.28(17A, 476). The Board issued an order denying Petitioners’ stay request on August 26, 2022. The Petitioners then filed their Motion to Stay with this Court on August 29, 2022.¹ This Court granted Petitioners’ Motion to Stay on September 23, 2022. Following the grant of a stay, Petitioners and Respondent filed their respective briefs now before this Court.

¹ The facts are adopted in full from this Court’s September 23, 2022 Ruling on Motion to Stay. Some additions have been provided to account for the most recent developments in the proceedings currently before this Court.

II. SCOPE AND STANDARD OF REVIEW

The Court's review of this administrative proceeding is governed by Iowa Code section 17A.19 (2022). The Court may "reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced" by meeting any of the statutorily enumerated grounds. Iowa Code § 17A.19(10). The burden of demonstrating the required prejudice and invalidity of the agency action is on the party asserting the invalidity. Iowa Code § 17A.19(8)(a); *Colwell v. Iowa Dep't of Hum. Servs.*, 923 N.W.2d 225, 231 (Iowa 2019). This can be shown in a number of ways, including proof the action was legally erroneous; unsupported by substantial evidence in the record when that record is viewed as a whole; unconstitutional; inconsistent with a rule of the agency; or otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. Iowa Code § 17A.19(10). The district court acts in the appellate capacity in exercising judicial review of agency action. Iowa Code § 17A.19; *Nance v. Iowa Dep't of Revenue*, 908 N.W.2d 261, 267 (Iowa 2018).

The central issue in this case is one of law and not fact. It is whether the Board erred in its interpretation of section 476.10A. The appropriate grounds for the Court's review, then, are sections 17A.19(10)(c) and (n). Review under section 17A.19(10)(c) is to determine whether the Board's action was "[b]ased upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency." Review under section 17A.19(10)(n) is to determine whether the Board's action was "[o]therwise unreasonable, arbitrary, capricious, or an abuse of discretion."

For the enumerated grounds set forth above, the parties agree that the Court "[s]hould not give any deference to the view of [the Board] with respect to particular matters that have not been

vested by a provision of law in the discretion of the agency.” *Id.* at § 17A.19(11)(b). When the legislature did not clearly vest the agency with the authority to interpret the statute, then the Court’s review is for correction of errors at law. *NextEra Energy Res. LLC v. Iowa Utils. Bd.*, 815 N.W.2d 30, 37 (Iowa 2012) (citation omitted). Accordingly, this Court will examine the Board’s interpretation of section 476.10 for correction of errors at law.

III. MERITS

Petitioners assert three main claims: 1) taxing statutes, including Iowa Code section 476.10A, must be strictly construed; 2) the Board did not act within the bounds set by the legislature in its interpretation of Iowa Code section 476.10A; and 3) the Board’s interpretation of Iowa code section 476.10A harms consumers. The Board’s main argument is that the language of 476.10A is unambiguous and it faithfully implemented the statute’s purpose.

A. Tax Statutes Must be Strictly Construed

First, “statutes which impose taxes are construed liberally in favor of the taxpayer and strictly against the taxing body. It must appear from the language of a statute that the tax assessed against the taxpayer was clearly intended.” *State ex rel. Iowa Dep’t of Transp. v. Gen. Elc. Credit Corp. of Delaware*, 448 N.W.2d 335, 341 (Iowa 1989) (citation omitted). The statute in question, Iowa Code section 476.10A(1)(a) provides:

The board shall direct all gas and electric utilities to remit to the treasurer of state one-tenth of one percent of the total gross operating revenues during the last calendar year derived from their intrastate public utility operations. The board shall provide a schedule for remittances.

There is no dispute that this statute imposes a tax on Iowa utilities. “It must appear from the language of a statute that the tax assessed against the taxpayer was clearly intended. As such, the Court will conduct the remainder of its analysis through this lens and strictly construe the language of 476.10A.

B. The Board Incorrectly Applied Iowa Code section 476.10A

Iowa Code § 476.10A(1)(a) provides:

The board shall direct all gas and electric utilities to remit to the treasurer of state one-tenth of one percent of the total gross operating revenues *during the last calendar year* derived from their intrastate public utility operations. The board shall by rule provide a schedule for remittances.

Id (emphasis added). In 2017, the Iowa Legislature imposed a July 1, 2022 “sunset date” for the assessment. 2017 Iowa Acts ch 169 §§ 34-38, 40. The sunset provision was codified as § 476.10A(4). In 2018, the Iowa Legislature further amended section 476.10A to reallocate appropriations from the remittances from then until the sunset of the statute. 2018 Iowa Acts ch 1172, § 91. That amendment, codified as Iowa Code § 476.10A(1)(c)(1)(a)-(d), states:

(a) *For the fiscal year beginning July 1, 2018, such remittances are appropriated to the Iowa energy center created in section 15.120.*

(b) *For the fiscal year beginning July 1, 2019, the first one million two hundred eighty-thousand dollars of such remittances shall be transferred to the general fund of the state, and the remaining amount is appropriated to the Iowa energy center created in section 15.120.*

(c) *For the fiscal year beginning July 1, 2020, the first two million nine hundred ten thousand dollars of such remittances shall be transferred to the general fund of the state, and the remaining amount is appropriated to the Iowa energy center created in section 15.120.*

(d) *For the fiscal year beginning July 1, 2021, the first three million five hundred thirty thousand dollars of such remittances shall be transferred to the general fund of the state, and the remaining amount is appropriated to the Iowa energy center created in section 15.120.*

Id (emphasis added).

The central issue before the Court is whether the Board correctly applied Iowa Code section 476.10A within the bounds set forth by the legislature. The Board’s main argument to support its implementation of 476.10A is that it fully and faithfully applied the unambiguous terms of the statute. The Board argues that, with an appropriate reading of the statute, it was required to issue

a final assessment in the spring of 2022 based on calendar year 2021 revenues. The Board partially bases this argument on the timing of the enactment of the statute by the legislature. Upon the 2018 amendment to Iowa Code section 476.10A, an assessment for calendar year 2017 had not yet been made. With calendar years 2018, 2019, 2020, and 2021 also concluding before the July 1, 2022 sunset date, the Board took this to mean there was a total of five calendar years left to be assessed as follows:

- 2018 invoice for 2017 calendar year assessment
- 2019 invoice for 2018 calendar year assessment
- 2020 invoice for 2019 calendar year assessment
- 2021 invoice for 2020 calendar year assessment
- 2022 invoice for 2021 calendar year assessment

Respondent's Brief p. 6. The Board's reading of the statute is not persuasive or within the scope of the legislature's intention.

"In resolving statutory disputes, our ultimate goal is to ascertain and give effect to the intent of the legislature When construing a statute, we assess the statute as a whole, not just isolated words or phrases." *Oyens Feed & Supply, Inc. v. Primebank*, 808 N.W.2d 186, 193 (Iowa 2011) (citations omitted). Additionally, in determining the particular meaning of a statutory term, this Court will seek a reasonable construction that serves the statute's purpose by looking to what the legislature actually said, not what it could have said. *Miller v. Marshal County*, 641 N.W.2d 742, 748 (Iowa 2002). Last, "when the language of a statute is plain, we do not read words or restrictions into a statute that are not readily apparent from the express terms." *Id.*

Applying the above principles, and reading § 476.10A(1)(a), which calls for remittances of gross revenues from the last calendar year, together with § 476.10A(1)(c)(1)(a)-(d), allocating annual remittances for each fiscal year beginning July 1, 2018 through July 1, 2021 inclusive, the Legislature's intent is clear:

- a) there would be four more annual remittances;
- b) remittances for the fiscal year beginning July 1, 2018 are from 2017 calendar year revenue;
- c) remittances for the fiscal year beginning July 1, 2019 are from 2018 calendar year revenue;
- d) remittances for the fiscal year beginning July 1, 2020 are from 2019 calendar year revenue;
- e) remittances for the fiscal year beginning July 1, 2021 are from 2020 calendar year revenue;
- f) no further remittances are called for under the statute which sunset at the end of the 2021 fiscal year (July 1, 2022); and therefor
- g) no further remittances are due from calendar year revenue after 2020.

The Board invoiced the utilities in April, 2021 for remittances from the utilities' calendar year 2020 revenue (*see* Certified Record p. 41). This was the fourth remittance since the fiscal year that began July 1, 2018 (*Id.*)² Then in May, 2022, the Board invoiced the utilities for remittances from the utilities' calendar year 2021 revenue (*Id.*). Under the above interpretation, those revenues were not intended by the Legislature to be remitted by the utilities, and are not due. Accordingly, the May 2022 invoice for calendar year 2021 revenue was not a valid tax. The Board erred in its interpretation and application of Iowa Code section 476.10A.

The Court need not address Petitioners' last argument that the Board's interpretation of 476.10A harms customers. The argument is not substantive in the Court's analysis and conclusion that the Board erred in its interpretation and application of Iowa Code section 476.10A.

² This was also the second invoice submitted during the fiscal year that began on July 1, 2020, and resulted in two remittances being paid during the same fiscal year. In its Order Denying Objection to Invoice at pages 6 and 7, the Board states, "The result sought by the Objectors, rescission of the May 2022 invoices, requires the Board to not only ignore the provisions of Iowa Code § 476.10A(1)(a) prior to the repeal of Iowa Code § 476.10A, but also to leave the appropriation directed by § 476.10A(1)(c)(1)(d) unfulfilled." The appropriation going unfulfilled, however, appears to be a direct result of the Board directing two remittances to be paid in one fiscal year and the State's accounting for that occurrence.

IV. CONCLUSION

For all of the reasons set forth above, the Court concludes the Board erred in its interpretation and application of Iowa Code section 476.10A. Accordingly, the Board's Order denying objection entered on July 29, 2022 is **REVERSED**. The May 2022 assessment was not authorized by Iowa Code section 476.10A, and is therefore rescinded, and any amounts paid by any utility pursuant to the May 2022 assessment shall be refunded.



State of Iowa Courts

Case Number
CVCV064145

Case Title
MIDAMERICAN ENERGY COMPANY ET AL VS IOWA
UTILITIES BOARD
Type: ORDER FOR JUDGMENT

So Ordered

Joseph Seidlin, District Court Judge
Fifth Judicial District of Iowa

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